

**ORGANIZATION AND DRAFTING
CONSIDERATIONS
FOR FLORIDA LIMITED LIABILITY
COMPANIES**

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**Palm Beach County Bar Association
Transaction Law Committee**

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FOR FLORIDA LIMITED LIABILITY COMPANIES**

By Rikki Lober Bagatell, Esq. and Gaël Beriro, Esq.

I. The Florida Revised LLC Act

- A. New Chapter 605 – Effective as of January 1, 2014**
- B. Old Chapter 608 is still in effect until January 1, 2015, then repealed**
- C. 1 year transition period; Pre 1/1/2014 LLCs are grandfathered until 1/1/2015**
- D. Pre existing LLCs can elect to be governed by Chap. 605 revised act**
- E. Still a default statute, meaning that unless the LLC is governed by the terms of an operating agreement, the act will apply and if the operating agreement does not address the terms, then the act applies - § 605-0105(2)**

II. Forming the LLC

A. File Articles of Organization – see form

- 1. Identify person authorized to manage and control LLC (Article IV)
- 2. Default rule § 605.0407(1) – an LLC is member managed unless the Articles or OA state that it will be manager managed or managed by manager or other similar language
- 3. For more complex business or for LLC with more than 3 or 4 members, probably better to select a “Manager”
- 4. Note designation AMBR = Authorized Member; MGR = Manager
- 5. Old form had MGRM = Managing Member; designation no longer exists on the DOS Articles form and should not be used
- 6. Many LLCs have Articles and Annual reports filed with MGRM designation; If OA does not spell out vesting of management, designation can be problematic for pre-2014 LLC as all members can claim to be Managing Members

B. Preparation of the Operating Agreement note however §605.0106

- 1. Terms can be oral or implied or in a record such as e-mail
- 2. Is not unenforceable because it is not signed by the members or by the representative

3. Best practice, have it signed and require signatures of new members/transferees
4. § 605.0106(1) An LLC is bound by & may enforce the OA, regardless of whether the company has itself manifested assent to the OA
5. § 605.0106(3) two or more persons who intend to be the initial members of an LLC may make an “agreement” that “upon formation of the LLC” will become effective as the OA
6. § 605.0106(4) A manager or transferee of an LLC is bound by the OA regardless of whether the manager or transferee has agreed to the OA
7. Note Revised act §605.0105(3) = 17 nonwaivable provisions = terms you cannot put in OA:
 - a. Vary the rights of the LLC to sue or be sued in its own name
 - b. Vary the power of a member to dissociate, except to require written notice
 - c. Relieve or exonerate a person from liability for bad faith, willful or intentional misconduct, or knowing violation of law
 - d. Vary grounds for judicial dissolution in 605.0702
 - e. Vary the law applicable under 605.0104
 - f. Unreasonably restrict the rights of a member to maintain direct or derivative actions
 - g. Vary the rights of a member to approve mergers, interest exchanges or conversions as provided in Article 10
 - h. Vary the required contents of the Plans for mergers, conversions, domestications, interest exchanges
 - i. Indemnify members or managers from breaches of their fiduciary duties or obligations, or conduct involving bad faith, willful or intentional misconduct or knowing violation of the law, or where they received an improper benefit
 - j. Vary the provisions of 605.0804 dealing with a Special Litigation Committee (“SLC”), but the OA may provide that the LLC may not appoint a SLC; however the OA may *not* preclude a court from appointing a SLC

- k. Vary the requirements, procedures, or other provisions of Ch. 605 pertaining to Registered Agents or the Department of State (e.g. requirements for filings or records)
8. and §605.0105(4) = handful of terms that are permissible
- a. The OA (1) may specify acts or transactions that would otherwise violate the duty of loyalty, which may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts; or (2) may alter the distributions prohibition in 605.0405(1)(b), so it requires solely that the total assets not be less than total liabilities
 - b. OA may expressly relieve a Member in a member-managed LLC from responsibility if it is imposed on another member, and may also eliminate a duty or obligation that would have pertained to the responsibility

C. Obtain EIN# - IRS form SS-4

- 1. If LLC is for Sole member – check box 9a for “other” and write “disregarded entity” (see Form SS-4 Instructions p.4); also file form 8832
- 2. If LLC has multiple members – check box for Partnership in 9a
- 3. If you want the LLC to be treated for tax purposes as a Corporation, also file IRS 8832

III. Operating Agreement Drafting Considerations

A. Membership

- 1. Identification of members and ownership percentages
- 2. § 605.0401 – ways to become a member:
 - a. If before formation (filing Articles and approving OA), then upon agreement of the member or members
 - b. If after formation, then by (i) as provided in OA, ii) As the result of a merger, interest exchange conversion, or domestication under § 605.1001-605.1072, iii) with the consent of all members, iv) to avoid dissolution by consent of transferees owning majority interest under §605.0701

3. Sharing ratios or units?
4. Multiple classes of interests?
5. Future issuances of membership interests
 - a. Employees
 - b. Future investors

B. Management (§605.0407 and 605.04071 - 605.004074)

1. Management by members or managers?
2. Avoiding deadlocks
3. Removal/vacancies of managers
4. Level of authority (what decisions are left to the members?)
 - a. Borrowing \$
 - b. Merger/sale
 - c. Affiliate contracts
 - d. Dissolution
 - e. Dilution events
5. Compensation of managers
6. Delegation of duties

C. Capital Contribution Requirements (§ 605.0402 and 605.0403)

1. Initial (cash; in kind)
2. Future
 - a. Cash calls
 - b. Dilution
 - c. Loans

D. Rules Governing Distributions

1. Who decides?
2. Mandatory periodic?
3. Proportions and preferences (interim and liquidating)
4. Tax distributions
5. Reserves

E. Member Competition Issues

1. Non-competition restrictions
2. Intellectual property ownership issues
3. Confidentiality covenants
4. Future ventures

F. Transfer Restrictions

1. Permitted transfers

Note: A person who becomes a member of an LLC is deemed to assent to, is bound by, and may enforce the OA, regardless of whether the member executes the OA (§ 605.0106(2))

2. Call options
3. Restrictions/rights of first refusal
4. Buy/Sell (pricing issues)
5. Drag along/Tag along rights

G. Tax Matters



FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Attached are the forms and instructions to form a Florida Limited Liability Company pursuant to Chapter 605, Florida Statutes. All information included in the Articles of Organization must be in English and must be typewritten or printed legibly. If this requirement is not met, the document will be returned for correction(s). The Division of Corporations suggests using the sample articles merely as a guideline. Pursuant to s. 605.0201, Florida Statutes, additional information may be contained in the Articles of Organization.

The name of a limited liability company must be distinguishable on the records of the Florida Department of State.

A preliminary search for name availability can be made on the Internet through the Division's records at www.sunbiz.org. Preliminary name searches and name reservations are no longer available from the Division of Corporations. You are responsible for any name infringement that may result from your name selection.

NOTE: This form for filing Articles of Organization is basic. Each limited liability company is a separate entity and as such has specific goals, needs, and requirements. Additionally, the tax consequences arising from the structure of a limited liability company can be significant. The Division of Corporations recommends that all documents be reviewed by your legal counsel. The Division is a filing agency and as such does not render any legal, accounting, or tax advice. The professional advice of your legal counsel to ascertain exact compliance with all statutory requirements is strongly recommended.

Pursuant to s.605.0201, Florida Statutes, the Articles of Organization must set forth the following:

ARTICLE I:

The name of the limited liability company, which must end with the words "Limited Liability Company," or the abbreviation "L.L.C.," or the designation "LLC."

ARTICLE II:

The mailing address and the street address of the principal office of the limited liability company.

ARTICLE III:

The name and Florida street address of the limited liability company's registered agent. The registered agent must sign and state that he/she is familiar with and accepts the obligations of the position.

ARTICLE IV: The name and address of each person authorized to manage and control the Limited Liability Company. Although this information is optional at this time, most financial institutions require this information to be recorded with the Florida Department of State in order to open an account. The Department of Financial Services also requires this information to issue Workers' Compensation.

Use "AMBR" for members who are authorized to manage and control the company. Use "MGR" for managers of manager-managed LLCs.

ARTICLE V: If an effective date is listed, the date must be specific and cannot be more than five business days prior to or 90 days after the date of filing.

What is an effective date?

You may list an effective date if you would like the limited liability company's existence to become effective on a date other than the date it is filed by this office. The effective date can be up to 5 business days prior to the date of receipt or up to 90 days after the date of receipt.

The entity's first annual report form will be due January 1st of the calendar year following the year of formation. If a limited liability company is created late in the calendar year and it doesn't expect to commence business until on or after January 1st of the upcoming year, it should add an effective date of January 1 for the coming year.

If the effective date is in the next calendar year, it will delay the requirement to file an annual report until the following calendar year. Example: A limited liability company is formed December 1, 2007. If it added an effective date of January 1, 2008, the first annual report would not be due until January 1, 2009. If a 2008 effective was not listed, the first annual report would be due January 1, 2008.

Signature:

Articles of Organization must be executed by an authorized person, and the execution of the document constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

FILING FEES:

\$ 125.00 Filing Fee for Articles of Organization and Designation of Registered Agent

\$ 30.00 Certified Copy (OPTIONAL)

\$ 5.00 Certificate of Status (OPTIONAL)

A letter of acknowledgment will be issued free of charge upon registration. Please submit one check made payable to the Florida Department of State for the total amount of the filing fees and any optional certificate or copy.

A cover letter containing your name, address and daytime telephone number should be submitted along with the articles of organization and the check. The mailing address and courier address are:

Mailing Address

Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314
(850) 245-6051

Street/Courier Address

Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301
(850) 245-6051

Important Information About the Requirement to File an Annual Report

All Florida Limited Liability Companies must file an Annual Report yearly to maintain "active" status. The first report is due in the year following formation. The report must be filed electronically online between January 1st and May 1st. The fee for the annual report is \$138.75. After May 1st a \$400 late fee is added to the annual report filing fee. "Annual Report Reminder Notices" are sent to the e-mail address you provide us when you submit this document for filing. To file any time after January 1st, go to our website at www.sunbiz.org. There is no provision to waive the late fee. Be sure to file before May 1st.

Any further inquiries concerning this matter should be directed to the Registration Section by calling (850) 245-6051.

COVER LETTER

**TO: Registration Section
Division of Corporations**

SUBJECT: _____
Name of Limited Liability Company

The enclosed Articles of Organization and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Name of Person

Firm/Company

Address

City/State and Zip Code

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

_____ at (_____) _____
Name of Person Area Code Daytime Telephone Number

Enclosed is a check for the following amount:

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> \$125.00 Filing Fee | <input type="checkbox"/> \$130.00 Filing Fee &
Certificate of Status | <input type="checkbox"/> \$155.00 Filing Fee &
Certified Copy
(additional copy is enclosed) | <input type="checkbox"/> \$160.00 Filing Fee,
Certificate of Status &
Certified Copy
(additional copy is enclosed) |
|--|---|---|---|

Mailing Address
Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street/Courier Address
Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

ARTICLES OF ORGANIZATION FOR FLORIDA LIMITED LIABILITY COMPANY

ARTICLE I - Name:

The name of the Limited Liability Company is:

(Must end with the words "Limited Liability Company, "L.L.C.," or "LLC.")

ARTICLE II - Address:

The mailing address and street address of the principal office of the Limited Liability Company is:

Principal Office Address:

Mailing Address:

ARTICLE III - Registered Agent, Registered Office, & Registered Agent's Signature:

(The Limited Liability Company cannot serve as its own Registered Agent. You must designate an individual or another business entity with an active Florida registration.)

The name and the Florida street address of the registered agent are:

Name

Florida street address (P.O. Box **NOT** acceptable)

City FL Zip

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 605, F.S..

Registered Agent's Signature (REQUIRED)

(CONTINUED)

ARTICLE IV-

The name and address of each person authorized to manage and control the Limited Liability Company:

Title:

"AMBR" = Authorized Member

"MGR" = Manager

Name and Address:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(Use attachment if necessary)

ARTICLE V: Effective date, if other than the date of filing: _____ (OPTIONAL)
(If an effective date is listed, the date must be specific and cannot be more than five business days prior to or 90 days after the date of filing.)

ARTICLE VI: Other provisions, if any.

REQUIRED SIGNATURE:

Signature of a member or an authorized representative of a member.
(In accordance with section 605.0203 (1) (b), Florida Statutes, the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S.)

Typed or printed name of signee

Filing Fees:

- \$125.00 Filing Fee for Articles of Organization and Designation of Registered Agent
- \$ 30.00 Certified Copy (Optional)
- \$ 5.00 Certificate of Status (Optional)

Entity Classification Election

Department of the Treasury
Internal Revenue Service

► Information about Form 8832 and its instructions is at www.irs.gov/form8832.

Type or Print	Name of eligible entity making election	Employer identification number
	Number, street, and room or suite no. If a P.O. box, see instructions.	
	City or town, state, and ZIP code. If a foreign address, enter city, province or state, postal code and country. Follow the country's practice for entering the postal code.	

- Check if: Address change Late classification relief sought under Revenue Procedure 2009-41
 Relief for a late change of entity classification election sought under Revenue Procedure 2010-32

Part I Election Information

1 Type of election (see instructions):

- a** Initial classification by a newly-formed entity. Skip lines 2a and 2b and go to line 3.
b Change in current classification. Go to line 2a.

2a Has the eligible entity previously filed an entity election that had an effective date within the last 60 months?

- Yes.** Go to line 2b.
 No. Skip line 2b and go to line 3.

2b Was the eligible entity's prior election an initial classification election by a newly formed entity that was effective on the date of formation?

- Yes.** Go to line 3.
 No. Stop here. You generally are not currently eligible to make the election (see instructions).

3 Does the eligible entity have more than one owner?

- Yes.** You can elect to be classified as a partnership or an association taxable as a corporation. Skip line 4 and go to line 5.
 No. You can elect to be classified as an association taxable as a corporation or to be disregarded as a separate entity. Go to line 4.

4 If the eligible entity has only one owner, provide the following information:

- a** Name of owner ► _____
b Identifying number of owner ► _____

5 If the eligible entity is owned by one or more affiliated corporations that file a consolidated return, provide the name and employer identification number of the parent corporation:

- a** Name of parent corporation ► _____
b Employer identification number ► _____

Part I Election Information (Continued)

6 Type of entity (see instructions):

- a A domestic eligible entity electing to be classified as an association taxable as a corporation.
- b A domestic eligible entity electing to be classified as a partnership.
- c A domestic eligible entity with a single owner electing to be disregarded as a separate entity.
- d A foreign eligible entity electing to be classified as an association taxable as a corporation.
- e A foreign eligible entity electing to be classified as a partnership.
- f A foreign eligible entity with a single owner electing to be disregarded as a separate entity.

7 If the eligible entity is created or organized in a foreign jurisdiction, provide the foreign country of organization ►

8 Election is to be effective beginning (month, day, year) (see instructions) ► _____

9 Name and title of contact person whom the IRS may call for more information

10 Contact person's telephone number

Consent Statement and Signature(s) (see instructions)

Under penalties of perjury, I (we) declare that I (we) consent to the election of the above-named entity to be classified as indicated above, and that I (we) have examined this election and consent statement, and to the best of my (our) knowledge and belief, this election and consent statement are true, correct, and complete. If I am an officer, manager, or member signing for the entity, I further declare under penalties of perjury that I am authorized to make the election on its behalf.

Signature(s)	Date	Title

Application for Employer Identification Number

OMB No. 1545-0003

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

EIN

▶ See separate instructions for each line. ▶ Keep a copy for your records.

Type or print clearly.	1 Legal name of entity (or individual) for whom the EIN is being requested	
	2 Trade name of business (if different from name on line 1)	3 Executor, administrator, trustee, "care of" name
	4a Mailing address (room, apt., suite no. and street, or P.O. box)	5a Street address (if different) (Do not enter a P.O. box.)
	4b City, state, and ZIP code (if foreign, see instructions)	5b City, state, and ZIP code (if foreign, see instructions)
	6 County and state where principal business is located	
	7a Name of responsible party	7b SSN, ITIN, or EIN
8a Is this application for a limited liability company (LLC) (or a foreign equivalent)?	8b If 8a is "Yes," enter the number of LLC members	
8c If 8a is "Yes," was the LLC organized in the United States?		<input type="checkbox"/> Yes <input type="checkbox"/> No
9a Type of entity (check only one box). Caution. If 8a is "Yes," see the instructions for the correct box to check.		
<input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Personal service corporation <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input type="checkbox"/> Other (specify) ▶ _____		
<input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Plan administrator (TIN) _____ <input type="checkbox"/> Trust (TIN of grantor) _____ <input type="checkbox"/> National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government/military <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises Group Exemption Number (GEN) if any ▶ _____		
9b If a corporation, name the state or foreign country (if applicable) where incorporated	State	Foreign country
10 Reason for applying (check only one box)		
<input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 13.) <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Other (specify) ▶ _____		
<input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Purchased going business <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____		
11 Date business started or acquired (month, day, year). See instructions.	12 Closing month of accounting year	
13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.	14 If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. <input type="checkbox"/>	
15 First date wages or annuities were paid (month, day, year). Note. If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) ▶		
16 Check one box that best describes the principal activity of your business.		
<input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Wholesale-other <input type="checkbox"/> Retail		
17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.		

18 Has the applicant entity shown on line 1 ever applied for and received an EIN? Yes No
 If "Yes," write previous EIN here ▶ _____

Third Party Designee	Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.	
	Designee's name	Designee's telephone number (include area code) ()
	Address and ZIP code	Designee's fax number (include area code) ()
	Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.	Applicant's telephone number (include area code) ()
Name and title (type or print clearly) ▶	Applicant's fax number (include area code) ()	
Signature ▶	Date ▶	

Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.¹ See also the separate instructions for each line on Form SS-4.

IF the applicant...	AND...	THEN...
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a-8a, 8b-c (if applicable), 9a, 9b (if applicable), and 10-14 and 16-18.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a-6, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10-18.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1-5b, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
Changed type of organization	Either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership) ²	Complete lines 1-18 (as applicable).
Purchased a going business ³	Does not already have an EIN	Complete lines 1-18 (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust ⁴	Complete lines 1-18 (as applicable).
Created a pension plan as a plan administrator ⁵	Needs an EIN for reporting purposes	Complete lines 1, 3, 4a-5b, 9a, 10, and 18.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits ⁶	Complete lines 1-5b, 7a-b (SSN or ITIN optional), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1-6, 9a, 10-12, 13-17 (if applicable), and 18.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a-5b, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581 ⁷	Complete lines 1, 2, 4a-5b, 9a, 10, and 18.
Is a single-member LLC	Needs an EIN to file Form 8832, Classification Election, for filing employment tax returns and excise tax returns, or for state reporting purposes ⁸	Complete lines 1-18 (as applicable).
Is an S corporation	Needs an EIN to file Form 2553, Election by a Small Business Corporation ⁹	Complete lines 1-18 (as applicable).

¹ For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

² However, do not apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).

³ Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

⁴ However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

⁵ A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

⁶ Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

⁷ See also *Household employer* on page 4 of the instructions. **Note.** State or local agencies may need an EIN for other reasons, for example, hired employees.

⁸ See *Disregarded entities* on page 4 of the instructions for details on completing Form SS-4 for an LLC.

⁹ An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.